

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

**JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND
COMMERCE**

Call to Order: By **CHAIRMAN JEFF PATTISON**, on February 6, 2003 at
7 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Rep. Jeff Pattison, Chairman (R)
Sen. Bill Tash, Vice Chairman (R)
Sen. Edward Butcher (R)
Rep. John Musgrove (D)
Sen. Linda Nelson (D)
Rep. Rick Ripley (R)
Sen. Debbie Shea (D)

Members Excused: None.

Members Absent: None.

Staff Present: Kelly Gorin, OBPP
Gary Hamel, Legislative Branch
Elaine Olsen, Committee Secretary
Doug Schmitz, OBPP

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape time stamp refers to the material which follows.

Committee Business Summary:

Hearing & Date Posted: Department of Environmental Quality
Overview, 2/6/2003
Executive Action: None.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 15}

Gary Hamel presented the Committee members with outlines of the Department of Environmental Quality (DEQ) Division budget requests.

EXHIBIT (jnh26a01)

Sandi Olsen, Division Administrator, Remediation Division, DEQ, said the four work units of the Division are responsible for the investigations and cleanups of state and federal superfund sites, the underground storage tank releases and abandoned mine sites. The Division provides staff for the Petroleum Tank Release Compensation Board. The four bureaus are the Hazardous Waste Sites Cleanup Bureau, Mine Waste Cleanup Bureau, Technical Services Bureau, and the Fiscal and Administrative Services Bureau

Sandi Olsen provided an overview of the staffing and responsibilities of the work units within the four bureaus, outlining the tasks and accomplishments of the various sections.

{Tape: 1; Side: A; Approx. Time Counter: 15 - 19}

CHAIRMAN PATTISON asked if the Department was responsible for the actual labor necessary to cleanup a contaminated site. **Sandi Olsen** said the Division responsible for the management of the cleanup. The responsible party or a contractor does the on-the-ground work. **CHAIRMAN PATTISON** asked how the cleanup was managed when both state and federal agencies are involved. **Sandi Olsen** said the Environmental Protection Agency (EPA) and DEQ will share the management, depending on the nature of the project.

CHAIRMAN PATTISON asked for a description of one day's activities on a cleanup site. **Sandi Olsen** said onsite work does not begin until an approved plan is implemented. The preliminary investigation to determine the nature of the contaminants, how wide-spread the problem and determining what kind of risk the material pose can take years. Alternatives to solving the problem are investigated as are the costs. Public comments are taken and ultimately a record of decision is completed documenting which alternative was chosen and why. Contracts for design and completion of the project are let.

CHAIRMAN PATTISON asked how long it took to get a project actually under way. **Sandi Olsen** said most projects take several years. **REP. MUSGROVE** asked how much interaction the Remediation Division had with the Permitting Division. **Sandi Olsen** said much

of the Remediation Division's work was based on information provided by the Permitting Division to determine cleanup standards. Information on technology is exchanged between the Divisions but the work units are responsible for different sites.

{Tape: 1; Side: A; Approx. Time Counter: 19 - 26}

SEN. BUTCHER said that small businesses are facing bankruptcy going into some of the cleanup projects when it sounds like the process can be completed in a simpler fashion. **Sandi Olsen** said that each containment has to be handled differently. For underground storage tank contaminants, the owner-operator has to make the decision on whether or not he will do the work himself. Assuming that site has been in compliance, under the Petroleum Storage Tank Release Compensation Act, insurance for cleanup is available. The owner/operator needs to provide the first \$17,500 in funds. **Sandi Olsen** said that land farming is the process used most often to cleanup petroleum leaks, but that process is still a regulated procedure.

SEN. BUTCHER stated that the site he was asking about was an existing service station so that the soil was saturated with diesel and gas. He asked why, when everyone seems very knowledgeable about what has to be done, does the individual have to hire high-priced engineering firms. **Sandi Olsen** replied that it is the owner/operator's decision as to whether they hire consultants and contractors. The Department's program has no statutory or regulatory requirement that an individual has to hire a consultant for the clean-up of underground storage tank releases. **Sandi Olsen** said that preliminary studies do have to be completed to determine the extent of the contamination.

{Tape: 1; Side: A; Approx. Time Counter: 26 - 30}

SEN. NELSON asked for a map of the cleanup sites and asked if the Division worked with small tank owners as well as Super Fund sites. **Sandi Olsen** said that Super Fund sites are not necessarily petroleum release sites. Many types of contaminants are dealt with by the Division. The Department works with the EPA to assist Tribes with contaminated sites.

SEN. SHEA commented that the transformation that has taken place at Silver Bow Creek is remarkable. The cleanup, the planting of native grasses and the presence of fish in the stream demonstrate what can be accomplished at these sites.

SEN. TASH inquired how the National Environmental Policy Act (NEPA) and the Montana Environmental Policy Act (MEPA) compare.

Sandi Olsen said the remedial process for NEPA and MEPA contains the same components. An action has to be identified, the alternatives researched, and the decision has to include public input.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 4}

Jan Sensibaugh, Director, DEQ, stated that the Acts are very closely parallel. She said, "The Department only makes substantive those things that we have regulatory authority to do after we do our environmental review." The federal governments can take those impacts that are found through their environmental review documents and put conditions on their permits to mitigate those impacts.

{Tape: 1; Side: B; Approx. Time Counter: 4 - 9}

John Arrigo, Administrator, Enforcement Division, DEQ, responded to several questions from the Committee about specific complaints.

{Tape: 1; Side: B; Approx. Time Counter: 9 - 17}

CHAIRMAN PATTISON asked where soil samples were tested and what the subsequent procedures would be. **Sandi Olsen** replied that a laboratory would test the sample and return the results to the owner/operator or their consultant. The consultant or owner makes a recommendation to the Department as to what the next step should be. If the levels are not too high, the file is closed. High levels will result in a recommendation for a dig-out or natural attenuation in some soil types. If free product is found in the water, pumps are installed to try to recover as much of that product as possible, and the water is sent for processing to try to recover as much of the product as possible.

Sandi Olsen said alternatives and costs are considered in cleanups. A cap of \$1 million is placed on remediation projects. **SEN. BUTCHER** asked for confirmation that the small operators' exposure is limited to \$17,500. **Sandi Olsen** said that when the site meets the eligibility criteria, the owner/operator is responsible for 50 percent of the first \$35,000 of cleanup costs. The fund covers additional remediation and third-party damages up to \$1 million.

Sandi Olsen said the Division funding is derived from federal funding, State Special Funding, and Resource Indemnity Trust (RIT) which includes Environmental Quality Protection Fund

(EQPF), orphan share and HazWaste CERCLA. **Sandi Olsen** said many costs are recoverable.

EXHIBIT (jnh26a02)

{Tape: 1; Side: B; Approx. Time Counter: 17 - 26}

CHAIRMAN PATTISON asked who paid for the initial testing on petroleum release sites. He inquired if the labs had to have any special accreditation and commented that he was wondering if local labs could be used for the testing so that costs could be minimized. **Sandi Olsen** replied that with an underground storage tank leak site, the tests are paid for Petroleum Tank Release Compensation Fund with an owner/operator match. Accreditation is required and the equipment is specialized.

SEN. BUTCHER asked if the testing was something that would be included in the curriculum at Montana State University (MSU) or at Montana School of Mines and Technology. **Sandi Olsen** replied she would assume that the type of testing would be apart of such environmental engineering curriculum.

Sandi Olsen said HB144 would include an increase in the tank registration fee for existing ongoing sites. Abandoned sites are not included in the proposal.

SEN. NELSON asked what the fee was currently and what was the proposed increase. **Sandi Olsen** replied that currently the statute requires a small tank fee of \$20 and a large tank fee is \$70. The bill proposes a cap of \$50 for a small tank and \$150 for a large tank. Amendments to the bill have been proposed. Small tanks are under 1,100 gallons and large is over 1,100 gallons.

CHAIRMAN PATTISON asked if farm heating oil tanks were included. **Sandi Olsen** said small farm and ranch tanks are excluded from regulation and therefore, pay no registration fee. HB10 will provide debt service for the bonds the Department proposes to sell to fund a large share of the Libby asbestos cleanup. The HazWaste CERCLA EQPF portion of the RIT fund could become negative so SB103 would authorize the use of up to \$600,000 from the orphan fund to backfill any shortages.

{Tape: 1; Side: B; Approx. Time Counter: 26 - 30}

REP. RIPLEY asked for the cause of the shortfalls in the budget. **Sandi Olsen** replied that the direct appropriations come out of the RIT fund. The Division's programs are funded by the interest

on the RIT and once the direct funds are removed, then the two accounts are funded by whatever is left over.

Sandi Olsen began an overview of the Division decision packages (DP).

{Tape: 2; Side: A; Approx. Time Counter: 1 - 11}

DP15, 16, 17, 83

Sandi Olsen said the DPs are a base adjustment for the Bureaus to restore personal services and operations funding that was under-spent as a result of staff vacancies. DP83 would result in a reduction of one FTE equivalent to accommodate the alternative pay plan.

DP41

Sandi Olsen said that DP41 was for approximately \$44,450 in each year of the biennium to reestablish 1.25 FTE in the Petroleum Release and Fiscal and Administrative Services sections. One FTE was eliminated because of long-term vacancy and a .25 FTE was converted to a modified FTE due to a prolonged vacancy.

Gary Hamel responded to questions by CHAIRMAN PATTISON, stating that one FTE was eliminated because it was a long-term vacancy. A second position had been reduced to three-quarter time at the request of the employee. Because of the prolonged vacancy the original .25 FTE was converted to modified. Two positions are involved in this request.

DP53

Sandi Olsen said the request is for one-time-only (OTO) increased spending authority for leaking underground storage tank site cleanup. Revenue is available to increase present law federal expenditures by \$345,000 for the 2005 biennium. Funding would be used to investigate and cleanup Leaking Underground Storage Tanks (LUST) where a responsible party is unable or unwilling to do the work, or where no responsible party can be identified.

DP54

Sandi Olsen said that the request is for a \$145,000 base adjustment in each year of the biennium for Libby asbestos removal for additional travel and contracted services not expended in the base year. Funding is for a total of one FTE and related operations.

DP66

Sandi Olsen said that DP66 is a request for a base adjustment for the Petroleum Board contract for \$65,000 for the Board's

subrogation contact. **REP. RIPLEY** asked for clarification on the need for the contract. **Sandi Olsen** said that when an owner/operator has insurance but seeks compensation from the fund for cleanup rather than going to the insurance company. The Petroleum Board seeks reimbursement from the insurance company. The contract is for an attorney external to the State contracted with by the Petroleum Tank Release Compensation Board.

DP71

Sandi Olsen stated that DP71 is a request for a total of \$60,000 in each year of the biennium for OTO database consolidation and maintenance in the Technical Services Bureau (TSB) in conjunction with long-term plans for conversion to Oracle.

DP81

Sandi Olsen said DP81 was a request for restricted, OTO authority to spend \$300,000 of environmental quality protection fund money in the next biennium for outside legal contracts. If approved, outside counsel would be contracted to pursue a cost recovery action at sites.

{Tape: 2; Side: A; Approx. Time Counter: 11 - 20}

DP82

Sandi Olsen stated that DP82 was a request for \$86,000 for each year of the biennium to add and aggregate of two FTE to the Mine Waste Cleanup Bureau.

DP83, 84, 85, 87

Sandi Olsen said the DPs are alternative pay plan adjustments. Personal services and operations are being reduced to fund pay increases associated with a department-wide move to a broadband pay plan. The Department would utilize fewer outside remediation contracts and would hold vacant positions open for extended periods of time.

DP86

Sandi Olsen stated that DP86 was a request for a base adjustment in the Fiscal and Administrative Services Bureau. Staff vacancies resulted in expenditures in operations and personal services were under-spent in the base year. **SEN. BUTCHER** asked if the requests were to enable the Department to have staff in place in the event of a large contract coming in. **Sandi Olsen** said that the Division would be a delay in issuing a full contract and the savings would be used to fund the vacancy adjustment.

CHAIRMAN PATTISON asked Gary Hamel to prepare a summary of the funding procedures being addressed in the alternative pay plan

DPs. **Gary Hamel** explained that the LFD issue concerns using personal services to fund part of the pay plan. The Department is using personal services to make a portion of that reduction. Because those FTE are still in existence, in the next biennium, those positions become fully funded. The reduction becomes temporary in nature; it is just for one biennium.

CHAIRMAN PATTISON asked how the committee could make the reductions permanent. **Gary Hamel** said the Committee could move those reductions to operations cost reductions or the Committee could remove an equivalent dollar amount of FTE. **CHAIRMAN PATTISON** asked for details on the Department's proposal. **Gary Hamel** said that the Department's proposals do reduce the overall costs but the reduction is short-term in nature for the portion that is personal services. The reduction in operations costs are permanent in nature.

Sandi Olsen said that the Division has had a minimum four vacant FTE over an extended period of time. The Department anticipates actively managing those vacancies to achieve the needed savings level. If someone left and the needed savings level had not been achieved, the position would be left vacant.

{Tape: 2; Side: A; Approx. Time Counter: 20 - 30}

DP87

Sandi Olsen said DP87 is a reduction of \$26,462 in operations and personal services in each year of the biennium for a .5 FTE to fund pay increases in the alternative pay plan.

DP65

Sandi Olsen said that the request was for OTO, restricted authority to spend \$111,111 in State Special and federal funds to cleanup multiple abandoned service stations along the First Avenue South corridor in Billings.

SEN. BUTCHER asked for cost information on the soil testing, engineering and removal of a 1,000 gallon underground storage tank. **Sandi Olsen** said she would provide the information.

CHAIRMAN PATTISON asked about the Lockwood septic tank legislation. **Sandi Olsen** replied that septic tanks are regulated by the Permitting Division of DEQ.

NPXX

Sandi Olsen said that New Proposal (NP) XX was a reduction in State Special Revenue of \$152,546 each year of the biennium in the corrective action program of the Petroleum Tank Release

Compensation Fund. The Division recognizes the reduction in workload occurring as a result of reductions in the number of modified releases being identified and has committed to reduce the program costs by 10%.

CHAIRMAN PATTISON asked for information on the Department's compliance with the audit. **Director Sensibaugh** stated the DEQ had implemented all of the oversight procedures needed to ensure the funds were being expended on the cleanup sites.

Steve Welch, Administrator, Permitting and Compliance Division, DEQ, said one of the Division's prime goals is to protect the environment. The primary function of the Division is to administer the State's regulatory environmental laws.

EXHIBIT (jnh26a03)

{Tape: 2; Side: B; Approx. Time Counter: 1 - 15}

Steve Welch said the Division offers a lot of compliance assistance through training and schools and technical assistance. If compliance assistance does not work, the Enforcement Division becomes involved. The Division has 163.7 FTE and five bureaus.

Steve Welch stated that the Division is comprised of the Air and Waste Management Bureau, the Community Services Bureau, the Environmental Management Bureau, the Industrial and Energy Minerals Bureau and the Water Protection Bureau.

Steve Welch explained that the Division funding is comprised of six percent General Fund, 12 percent State Special RIT, 42 percent State Special fees, and 39 percent federal dollars. The total of General Fund is \$1.5 million with appropriations going to hard rock mines and minerals program, solid waste, water permits, Natural Resource Information System, asbestos, open pit mines, and the Major Facility Siting Act. He addressed the exhibit which illustrated the total funding of \$766,801 for the Division for the 2005 biennium.

CHAIRMAN PATTISON asked how much information the Division provided to NRIS. **Steve Welch** said that the Division utilized a lot of information that is provided on NRIS. He continued, describing the staffing problems resulting from difficulties in recruiting and retention of qualified personnel. Those problems have been eased since the inception of the alternative pay plan.

{Tape: 2; Side: B; Approx. Time Counter: 15 - 25}

Steve Welch reported that the Air and Waste Management Bureau handled the air quality programs, some of which are federally mandated. These programs include air quality permitting and compliance. The bureau is responsible for monitoring and inspection of the sites. The asbestos control program's primary function is to ensure the containment of old asbestos in areas of building renovations. **CHAIRMAN PATTISON** commented that the expense of an asbestos removal project can lead to noncompliance. **Steve Welch** replied that the expense has to be weighed against the concern for public health.

{Tape: 2; Side: B; Approx. Time Counter: 25 - 30}

Steve Welch said the Hazardous Waste Program is a part of the Air and Waste Management Bureau. Portions of this program are federally mandated. Safe disposal of hazardous waste is monitored. Fifty percent of the \$6,877,062 biennial budget is derived from air operating and application fees. Other funding sources include RIT fund, hazardous waste grant and fees, and asbestos grant and fees. General Fund comprises about one percent of the Bureau funding.

SEN. TASH asked if air quality particulate levels are set on a regional basis. **Steve Welch** replied that the levels are set by rule in Montana by the Board of Environmental Review. National standards must be met. Fees are set based on the tons of emissions at the site.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 6}

Steve Welch commented that slash burning is regulated primarily by the timing in relation to the climatic conditions. **REP.**

RIPLEY asked if the United States Forest Service is required to obtain a permit for a prescribed burn. **Steve Welch** said that a permit is required for a prescribed burn but that he did not know about permitting related to a "let it burn" situations.

REP. MUSGROVE asked if air quality has a total maximum daily load determination. **Steve Welch** replied that in a number of programs a person cannot exceed certain levels. Those levels are an accumulative limit for all particulate discharges.

Steve Welch said the Community Services Bureau is responsible for solid waste program which includes the licensing and regulation of solid waste disposal facilities. The Bureau administers the Septic Control Act, assists with the training land fill operators, and administers the junk vehicle program.

{Tape: 3; Side: A; Approx. Time Counter: 6 - 19}

Steve Welch said the Public Water Supply program is one that ensures that drinking water is safe. The regulators work closely with the regulated community to ensure the public health. The primary funding source is EPA grants. The water system operators are educated about new rules and they learn new techniques.

Steve Welch outlined the funding sources for the \$11,482,489 Community Services Bureau budget which is comprised of fees and grants with about three percent General Fund. Public water facilities are being impacted by the Bioterrorism Act and homeland security issues.

Steve Welch stated the Environmental Management Bureau administers the Metal Mine Reclamation Act, Hard Rock Reclamation and Development, and the Major Facility Siting Act. **REP.**

MUSGROVE asked about relevant legislation being addressed this session.

Steve Welch said the Hard Rock Program which includes the administration of the Metal Mines Reclamation Act. The EIS process can involve a large amount of information. Once permits are issued, the Bureau is responsible for inspections and monitoring of sites. In response to questions from CHAIRMAN **PATTISON**, **Steve Welch** said that currently there are 72 operating permits. The State is managing the reclamation several large sites where the reclamation bonds had been forfeited.

{Tape: 3; Side: A; Approx. Time Counter: 19 - 30}

SEN. TASH asked if the court-ordered backfill of open-pit mining sites presented problems. **Steve Welch** replied that the bonding level did not anticipate the backfill. **SEN. TASH** stated that backfill using mine waste could threaten water quality standards. He asked about the distinction in the funding between hard rock and open pit mining. **Steve Welch** said the funding is separate.

SEN. BUTCHER asked for information on the Kendall reclamation. He said it appeared that the permitting process should have required the company to dump the fill on the top of the hill so that it could have easily been backfilled. **Steve Welch** said the mine grew steadily as it changed permittees and operators. The requirements of the Metal Mine Reclamation Act could be met at that time by moving the fill downslope. The agency has signed a contract to do an EIS to determine the best mechanism to take care of the problem.

SEN. BUTCHER asked if future permits will require that the overburden be dumped on the up slope to allow for easier backfill. **Steve Welch** said the requirement may be the result of the Supreme Court decision. The company would be bonded accordingly to ensure that the overburden could be moved to the up slope. The Metal Mines Reclamation Act limits what the agency can require of the mine operators.

{Tape: 3; Side: B; Approx. Time Counter: 1 - 14}

SEN. TASH cited Colstrip as an example where reclamation has restored areas damaged by now outdated mining practices.

CHAIRMAN PATTISON asked about the liability at the Zortman Landusky Mine. **Steve Welch** said some federal money is being made available for reclamation efforts. Most of the higher expenses are related to water treatment.

SEN. BUTCHER, referencing the Berkeley Mine Pit in Butte, asked about overflows. **Director Sensibaugh** said the Pit is going to overflow. EPA has a consent decree with ARCO and they have begun construction on a water treatment facility that will treat the water before it is discharged into Silver Bow Creek. **SEN. BUTCHER** asked if metals in the water can be reclaimed. **Director Sensibaugh** said that Montana Tech is interested in finding a technique to reclaim the metals but the technology has not been developed yet. **SEN. BUTCHER** asked if the mine tunnels will fill up with the overflow. **Director Sensibaugh** said the studies indicate that should not be a problem.

REP. MUSGROVE asked about the mines along Carpenter Creek.

Director Sensibaugh addressed several questions that had come up earlier. She said that at the Golden Sunlight Mine, the Department could choose to do backfill, as provided by the Supreme Court decision. The quality of the rock that is being put back in the pit is one of the issues at the Golden Sunlight Mine reclamation. Referencing the under bonding issue at the Zortman Landusky Mine, **Director Sensibaugh** said that the Bureau used to consider how to reclaim, recontour and revegetate the land. Water quality problems became known in the 1990s. Reclamation plans addressed the dirt work so the bonding amounts did not include water treatment issues. Once the rock is moved and fractured, the water quality problems exist forever.

{Tape: 3; Side: B; Approx. Time Counter: 14 - 26}

CHAIRMAN PATTISON commented that at times it appeared the Department was attempting to return the water quality to better than it was in the first place. **Director Sensibaugh** said the agency struggles with the definition of "naturally occurring" and when do you define something as naturally occurring. If the Department can demonstrate that the causes of the pollution are naturally occurring, citizens are not required to clean up the water beyond those naturally occurring levels.

SEN. SHEA asked how backfilling could be mandated if the original permit did not require the process. **Director Sensibaugh** said the Golden Sunlight Mine is the only site where that has been required. Golden Sunlight was operating under the initial plan all the while the litigation was taking place. To go back now and implement that process while the mine is operating is impossible.

SEN. TASH asked if computer modeling could be used in the total maximum daily load (TMDL) program. **Director Sensibaugh** said to meet the court-mandated time line, a combination of field work and computer modeling might be needed. The models are available so it would be a matter of determining which watershed would be studied with which method.

Sandi Olsen address REP. MUSGROVE'S question on Carpenter Creek. She said that the drainage is contaminated by mining waste including acid mine drainage, tailings, mining waste and numerous discharges that impacting water quality, reduction in fishing productivity, reduction in forest growth, and high sediment runoff during precipitation events. Zinc, copper and lead are contaminating the site along with iron and manganese. The cleanup funds are appropriated on the federal level and no initial funding has been made available.

Steve Welch continued with the overview of the Environmental Management Bureau. The Major Facility Siting Act is all General Fund. The Hard Rock program is funded with RIT and General Funds.

{Tape: 4; Side: A; Approx. Time Counter: 1 - 8}

Steve Welch said the Industrial and Energy Minerals Bureau is comprised of the Coal and Uranium Mining section and the Open Cut Mining section. The Bureau provides compliance assistance and monitoring of sites. New mine applications might be forthcoming.

CHAIRMAN PATTISON asked about the status of the Otter Creek Mine. **Director Sensibaugh** said that the State owns every other section

in the tract. The Great Northern Properties own the alternate sections. They are talking to large corporations such as Kennicott and Bechtel about assisting with the startup of the mines. DEQ is working with SEN. THOMAS to put together legislation to allow the State to do the initial drilling, the cultural evaluation, and some of the baseline evaluation. No serious applicant has come forward to develop the mine. The entity would need to acquire the land leases from the Department of Natural Resources and Conservation (DNRC).

SEN. BUTCHER said he had heard that the Land Board had voted against the mine permit. **Director Sensibaugh** said that the Land Board had approved the transfer of the tracts from the federal government to the State but they put a lot of conditions on the transfer in order to get concurrence from the Northern Cheyenne Tribe. The leases have been transferred.

{Tape: 4; Side: A; Approx. Time Counter: 8 - 14}

Steve Welch said the Open Cut Mining regulates mining reclamation for sand, gravel, bentonite, scoria, peat and soil. At any one time there is about 2,000 active permits across the state. Funding for the Bureau includes General Fund, grants, RIT and Reclamation and Development funds.

SEN. SHEA asked about a sand and gravel operation in Great Falls that was operating 24-hours a day and was shut down when neighbors complained. **Steve Welch** said the business was cited and they did have to stop work for a while. They closed completely because they had run out of gravel. Regulations do allow for some flexibility in hours of operations. If the business is shut down because of violations, they would still need to complete the site reclamation.

{Tape: 4; Side: A; Approx. Time Counter: 14 - 24}

Steve Welch said the Bureau of Water Protection is comprised of the Permitting Section and the Subdivision Section, which addresses water and waste water in small subdivisions.

REP. MUSGROVE asked about the difference in consumptive and nonconsumptive use in reference to permitting. He said he was concerned about the permitting differences between DEQ and DNRC. It appears you can deplete an aquifer without "consuming" it.

Steve Welch replied an aquifer can be lowered through some form of consumption. There is a cut off when you have to have a water right. Most subdivisions have to obtain a water right because they will be impacting other users.

SEN. TASH commented that consumptive use is based on decreed rights to use the water. **Art Compton** stated that in reference to coal bed methane (CBM) water issues, DNRC has stated that the water is not put to consumptive use. This avoids the need for CBM developers to obtain water rights to develop their mineral rights. **REP. MUSGROVE** said it appears the consumptive use will become a water rights issue.

{Tape: 4; Side: A; Approx. Time Counter: 24 - 30}

DP18

Steve Welch said the request is for a budget reduction in General Fund, State Special and federal revenue to fund the alternative pay plan.

DP19

Steve Welch stated the DP was a request for a base adjustment to restore \$9,926 in State Special spending authority to the base for operating expenses in the Division administrative unit.

DP21

DP 21 is a request for a base increase to restore fiscal 2002 authorized amount in area where increased expenditures are anticipated. The request is for \$30.2 million in biennial authority for reclamation at mine sites with funding coming from bond forfeitures or settlement agreements.

DP22

Steve Welch stated that the request is for a base increase in the area of MEPA administrations. The funding would restore FY02 authorized amounts in areas where increased expenditures are anticipated. Funds would be used for increases in printing, supplies, postage, advertising and travel for work with potential EIS applicants.

DP23

DP23 would increase the MEPA projects base to the FY02 authorized level to allow for increases in operations.

DP24

Steve Welch said that the DP was for approximately \$86,600 in each year of the biennium to restore the base to FY02 authorized amounts for personal services and operations in the air quality program. **CHAIRMAN PATTISON** asked for details on the request.

Steve Welch said the program had several vacant FTE and the request would fund the restoration of personal services and operations should staffing levels increase.

DP25

The DP would increase the base in the hazardous waste program to FY02 authorized amounts to allow for computer purchases and an increase in indirect expenditures in anticipation of full staffing.

DP26

Steve Welch stated the request for a base increase of approximately \$2,000 in each year of the biennium in the asbestos budget would fund an increase in overtime and indirect charges.

REP. RIPLEY asked if the reduction was because the federal funding was not available.

{Tape: 4; Side: B; Approx. Time Counter: 1 - 15}

Judy Hanson, DEQ, said the PPG funding levels have remained static so, with inflation, the funding amount has decreased.

DP27

Steve Welch said the request was for an increase to the base in the junk vehicle program to restore fiscal 2002 authorized amounts for increased overtime, vehicle crushing, legal fees, travel increasing indirect costs. **SEN. TASH** asked who paid for the crushing of junked vehicles. **Steve Welch** replied that the agency contracts to have the vehicles crushed. The salvage pays for that. **SEN. BUTCHER** asked for the actual total expenditures. **Judy Hanson** said that in the base FY of 2002, salvage income was greater than the cost of vehicle crushing. The total expenditure for crushing vehicles is not broken out.

DP28

DP28 is a request for a base increase of approximately \$54,000 each year of the biennium for personal services and operating costs anticipated with full staffing.

DP29

The request is for an increase to the base to restore FY02 authorized amounts in the solid waste program. Funding would be used for personal services and operating expenses.

DP30

Steve Welch said the request was for approximately \$69,500 each year of the biennium to restore FY02 amounts in operations in the water and waste water operator certification program.

DP31

DP31 would increase the base to restore FY03 authorized amounts for personal services and operations in the hard rock mining program.

SEN. BUTCHER asked for the total amount of the expenditures in DP29, 30, 31. **Judy Hanson** described the various funding sources and the current budgets for the programs.

{Tape: 4; Side: B; Approx. Time Counter: 15 - 25}

DP32

Steve Welch said the net impact of the DP for the Major Facility Siting Act (MFSA) was a net General Fund reduction of about \$37,888 for each year of the biennium.

DP33

Steve Welch stated that the request was for an increase to the base to restore FY02 authorized amounts in the MFSA. The \$300,000 would be used for future MFSA projects with the funding collected from MFSA fees.

DP34

DP34 would authorize the expenditure of \$5,500,000 in funding raised through the sale of hard rock mining reclamation bonds authorized by SB484 for mine reclamation.

DP35

Steve Welch said DP35 was a request for a base increase of \$4 million to restore FY02 authorized amounts where increased expenditures are anticipated. Authority would be used for reclamation of mine sites with funding coming from various federal sources.

DP36

DP36 is a request for a base increase to restore FY02 authorized amounts in the coal program base for operations expenses. Funding is 80 percent federal and 20 percent RIT

DP37

Steve Welch said the DP would increase the base in the opencut program by approximately \$32,000 each year of the biennium for personal services and operations. Funding is a reduction in General Fund with an increase in State Special Revenue.

DP38

Steve Welch said the request is for authority for program costs in the subdivisions program. The request is an increase in State

Special Revenue of approximately \$262,000 each year of the biennium.

DP39

DP39 is a request for a base adjustment in the water permitting program to increase personal services and operations. The 2001 legislature authorized funding for four FTE in the program and the hiring of the FTE was delayed, causing the operations cost to be underspent.

DP42

Steve Welch said the request was for spending authority of \$240,000 each year of the biennium for additional federal state revolving funds to implement the federal Safe Drinking Water Act. The request would add three FTE and fund increased expenditures for contracted services for on-site technical assistance and training for system operators.

{Tape: 5; Side: A; Approx. Time Counter: 1 - 10}

Steve Welch said the local EPA had been instrumental in helping the Department complete some of the Safe Drinking Water Act.

SEN. BUTCHER asked if the federal standards accepted in the scientific community. **Steve Welch** replied that the levels are based on rigorous research. **SEN. BUTCHER** asked if communities might just reach a point that they just put a warning that the water is unsafe for consumption rather than afford the treatment required. **Steve Welch** said such water systems could not be legally permitted. **Director Sensibaugh** said the only way a city water system could deliver water that did not meet the standards and not be fined, would be if everyone was disconnected from the system.

{Tape: 5; Side: A; Approx. Time Counter: 10 - 15}

DP45

Steve Welch said that DP45 would fund one FTE that would be used as an asbestos compliance specialist to address noncompliance concerns. The request is that the funding be made permanent. Funding would come from General Fund and State Special Revenue.

SEN. TASH asked if the buildings were all public buildings.

Steve Welch said the buildings were public and private. The Division is attempting to work with the individuals rather than fine them

{Tape: 5; Side: A; Approx. Time Counter: 15 - 25}

SEN. SHEA asked about the number of people who remain noncompliant after contact from the Division. **John Arrigo** said the primary violation is failure to obtain a permit before demolishing a building where asbestos is present. If a violation is discovered, the contractor is contacted by letter warning them. If the violators do not come into compliance, then an enforcement action is initiated. Very few municipalities have been found to be violation. Enforcement is used as an education tool when appropriate, but the Division does try to assist the contractors in being compliant.

CHAIRMAN PATTISON asked about demolition of buildings with asbestos. **John Arrigo** clarified that the enforcement of asbestos regulations is often in renovation efforts, not strictly demolitions.

DP46

Steve Welch said the request would reestablish one-time-only funding for the Hazardous Waste program for contracted technical assistance. The request is for \$90,000 in the first year of the biennium to be funded by State Special Revenue from the applicant fees. No funds were spent in the last biennium because no application was received.

DP47

Steve Welch said the request is to obtain contracted services in the operator certification program for the certification of operators of public water and wastewater systems. The request is for \$35,000 each year of the biennium from State and Federal Special Revenue. Funds would be obtained from the Drinking Water State Revolving Fund set-aside grants and operator certification fees.

{Tape: 5; Side: A; Approx. Time Counter: 25 - 30}

DP48

DP48 is a request for a base increase to fully implement the operator reimbursement program. Funding is from a federal grant that was received late in the base year.

DP50

DP50 would restore OTO funds to provide grants to counties for administration of local junk vehicle programs. The request is that the funding be made permanent.

DP51

Steve Welch said the request is to reestablish spending authority for the abandoned vehicle reimbursement program to meet the set aside mandated by HB124 in the last session. The request is for \$172,000 each year of the biennium in State Special Revenue. This is an ongoing program and the request is that the funding be made permanent.

DP69

DP69 would restore OTO funding in State Special Revenue for database maintenance and enhancements in the waste management section. Funding is \$50,000 each year of the biennium from the junk vehicle disposal fees.

DP70

Steve Welch said the request is for \$148,861 each year of the biennium in State and federal special revenue for database maintenance of the enterprise-wide databases within the Permitting Division. Funding would come from fees, HazWaste Cercla and EPA grants.

Robin Trenbeth addressed questions from the Committee on the exchange of information

{Tape: 5; Side: B; Approx. Time Counter: 1 - 8}

PL78

Steve Welch stated that the DP would reestablish funding for an FTE that was removed from the base budget. Portions of the FTE would be used in the public water supply program, the Industrial and Energy Minerals Bureau and the Air and Waste Management Bureau. Funding would be from General Fund and State and Federal special revenue.

REP. RIPLEY commented that the RIT fund would probably be negative.

DP80

Steve Welch said the DP would correct a technical error

DP59

Steve Welch said the request was for an additional FTE in the public water supply program to do assessments and training required by the Bioterrorism Act. Funding is from a federal grant.

DP201

Steve Welch said the DP would transfer money from the Division to the Director's office to accommodate a program that was moved to the Director's office.

DP7029

The DP would reduce fees as time is being charged differently.

DP7039

Steve Welch said DP7039 would reduce the General Fund appropriation in the water permit section. Permit fees would be used to fund the program.

Doug Schmitz commented that DEQ submitted a program list when the budget process began. Priorities were established at that time on an agency-wide basis. That is why the sequence of numbering in the DPs is different.

February 6, 2003

PAGE 22 of 22

ADJOURNMENT

Adjournment: 12:20 P.M.

REP. JEFF PATTISON, Chairman

ELAINE G. OLSEN, Secretary

JP/EGO

EXHIBIT (jnh26aad)